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999 E Street, N.W.
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FIRST GENERAL COUNSEL'S REPORT

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DATE RECEIVED: September 12, 2003

DATE ACTIVATED: September 12, 2003

EXPIRATION OF STATUTE OF
LIMITATIONS: 4/30/02

SOURCE: LifeCare Holdings, Inc.

RESPONDENTS: LifeCare Holdings, Inc.
LifeCare Management Services, LLC
Donald Boucher
Dave LeBlanc
Hedy LeBlanc
John George, M.D.
Ann George
Leroy Thompson

RELEVANT STATUTES: 2 U.S.C. §§ 437g(a)(5)(B), 437g(d)
2 U.S.C. § 441b(a)
2 U.S.C. § 441f
11 C.F.R. § 110.1(e)
11 C.F.R. § 110.1(g)
11 C.F.R. § 110.4(b)(1)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

LifeCare Holdings, Inc. ("LifeCare") submitted a *sua sponte* submission on September 12, 2003 notifying the Commission that its subsidiary, LifeCare Management Services, LLC ("LMS"), may have reimbursed up to six of its employees an aggregate total of over \$100,000 in political contributions made to multiple political committees. LifeCare has produced records

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1 from its own internal investigation and represents that it wishes to cooperate fully with the
2 Commission in resolving this matter. This Office refers the Commission to the September 12,
3 2003 *sua sponte* submission for a detailed presentation of the facts in this case, and references
4 the submission throughout this Report.

5 LifeCare is a corporation whose sole purpose is to act as a holding company for its
6 subsidiary, LMS.¹ LMS is a limited liability company (LLC) that was established in the state of
7 Louisiana with LifeCare as its sole member. LifeCare and LMS go beyond having close ties with
8 one another—they are essentially alter egos of one another. LifeCare and LMS share corporate
9 offices and each executive officer of LMS holds the same title in LifeCare, although the position
10 within LifeCare carries no added responsibilities or additional compensation. Further, LifeCare
11 has no cash flow of its own, and conducts none of its own operations.

12 The September 12, 2003 *sua sponte* submission reveals the following facts: (1) former
13 LMS Chief Executive Officer and President, David LeBlanc, had full discretionary authority to
14 award non-annual bonuses which were not subject to any formal review process; (2) there is an
15 unusually close correlation between political contributions made by LMS employees and bonus
16 and expense payments paid out to those employees by LMS from 1997 to 2002; (3) Mr. LeBlanc
17 reportedly had an agreement with former LMS Vice President for Government Relations, Donald
18 Boucher, to increase Mr. Boucher's salary in the amount necessary to pay for political
19 contributions made by Mr. Boucher; and (4) Mr. Boucher encouraged at least one LMS executive
20 to make certain political contributions and told the executive that the money would be repaid to

¹ LifeCare was co-founded by David LeBlanc and Ann George in 1992. Mr. LeBlanc served as CEO and President of both LMS and LifeCare during the time period relevant to this matter and Ms. George was an employee of LMS during the relevant time period. A full discussion of the company's history and background is contained in the September 12, 2003 *sua sponte* submission at page 2

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him—the executive subsequently made contributions which, according to the executive, were reimbursed by LMS.

II. FACTUAL AND LEGAL ANALYSIS

A. LMS and LifeCare

The information contained in the *sua sponte* submission provides evidence that LMS funds may have been used to reimburse political contributions made by several of its employee executives. Accordingly, this Office recommends that the Commission find reason to believe that LMS and LifeCare each violated 2 U.S.C. § 441f by making contributions in the name of others and 2 U.S.C. § 441b(a) by making corporate contributions to various political committees.²

1. Contribution in the Name of Another

The Act provides that no person shall make a contribution in the name of another person or knowingly permit his or her name to be used to effect such a contribution. 2 U.S.C. § 441f. Therefore, if LMS reimbursed its employees for contributions they made to political committees, it violated 2 U.S.C. § 441f by making contributions in the name of others.

Based on the facts contained in the *sua sponte* submission, there is reason to believe that at least two LMS executives, Mr. LeBlanc and Mr. Boucher, were engaged in a scheme to reimburse LMS executives, including themselves, for contributions made in their own names and in the names of several of LMS's other executive employees. Specific evidence of this alleged

² All of the facts relevant to these matters occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act or statements of law regarding provisions of the Act contained in this report refer to the Act as it existed prior to the effective date of BCRA. Similarly, all citations to the Commission's regulations or statements of law regarding any specific regulation contained in this report refer to the 2002 edition of Title 11, Code of Federal Regulations, published prior to the Commission's promulgation of any regulations under BCRA.

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1 scheme includes the close correlation (in time and amount) between political contributions made
2 by LifeCare executives and LMS payments to those executives for expenses and bonuses. In
3 addition, LMS executive Leroy Thompson stated that he was told by Mr. Boucher that if he made
4 certain political contributions, the company would get the money back to him somehow. Sept.
5 12, 2003 Submission at 4, 15-17. Mr. Thompson further states that he made three such
6 contributions and he believes that the amounts of those contributions were subsequently
7 reimbursed to him by LMS. *Id.* This Office believes that such evidence is enough to provide
8 reason to believe that LMS and LifeCare violated the Act.

9 Under well-settled principles of agency law, actions by executive officers, like Mr.
10 LeBlanc, are imputed to the executive's company. *See Weeks v. United States*, 245 U.S. 618, 623
11 (1918). Mr. LeBlanc was CEO and President of LMS during the relevant time period, as well as
12 President and co-founder of LifeCare. Similarly, Mr. Boucher was a Vice President of both LMS
13 and LifeCare. These titles bespeak individuals with significant authority within the company,
14 both actual and apparent. In addition, according to the information contained in the submission,
15 Mr. LeBlanc had express authority to award non-annual discretionary bonuses to LMS employees
16 and to approve requests for reimbursement of expenses incurred by LMS employees. Because
17 Mr. LeBlanc held executive titles in both LMS and LifeCare, but had only a single set of
18 responsibilities, he was acting within the scope of his authority as an officer of both LifeCare and
19 LMS when he allegedly approved the reimbursement of contributions through bonuses and

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1 expense payments.³ Mr. Boucher similarly acted in his capacity as an officer of both LMS and
2 LifeCare when he encouraged contributions and took steps to ensure that such contributions were
3 reimbursed. Accordingly, this Office recommends that the Commission find reason to believe
4 that LMS and LifeCare each violated 2 U.S.C. § 441f by making contributions in the names of its
5 executives.

6 Furthermore, the same principles of agency law provide this Office with a basis for
7 recommending that the Commission find that LMS's and LifeCare's violations were knowing
8 and willful. *See* discussion *infra* pages 9-10 (recommending knowing and willful findings
9 against certain LifeCare executives). However, this Office does not recommend such a finding at
10 this time for two reasons. First, LifeCare voluntarily contacted the Commission and willingly
11 shared the results of its internal investigation. Second, further information may be revealed in
12 the course of our informal investigation that may be relevant to the exercise of the Commission's
13 discretion with regard to making a possible "knowing and willful" finding against LMS and
14 LifeCare.

15
16 Accordingly, it would be appropriate for the Commission to defer any decision

³ LifeCare submitted evidence that employees of LMS's Human Resources Department did not ask Mr. LeBlanc to provide explanation of the non-annual discretionary bonuses approved by him because of his position in the company. LifeCare, through its counsel, explains in its *sua sponte* submission, "Most of the employees viewed Mr. LeBlanc as the owner of the Company, and given his senior status (CEO) felt it would have been inappropriate for them to require additional information from him." Sept. 12, 2003 Submission at 9.

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1 about whether LMS and LifeCare acted knowingly and willfully with regard to the possible
2 violations of 2 U.S.C. § 441f.

3 2. Corporate Contribution

4 The Act prohibits corporations from making contributions or expenditures from their
5 general treasury funds in connection with any election of a candidate for federal office. 2 U.S.C.
6 § 441b(a). Pursuant to the Act's corresponding regulations, an LLC can also be held liable for
7 making corporate contributions under certain circumstances.⁵ See 11 C.F.R. § 110.1(g).

8 In 1999, the Commission promulgated the regulations found at 11 C.F.R. § 110.1(g) to
9 deal with contributions by LLCs. These regulations provide that contributions by an LLC are
10 treated as corporate contributions if the LLC elects to be treated as a corporation for tax
11 purposes. 11 C.F.R. § 110.1(g)(3). Otherwise, contributions made by the LLC are treated as if
12 made by a partnership. *Id.* Prior to the promulgation of these regulations, the Commission
13 treated contributions by LLCs as corporate contributions if the state where the LLC was
14 established did not recognize the LLC as a distinct form of business organization. See A.O.
15 1995-11, A.O. 1998-11. Again, if the LLC was not treated as a corporation for contribution
16 purposes, it was treated as a partnership. *Id.* Contributions by partnerships, whether made before
17 or after the promulgation of 11 C.F.R. § 110.1(g)(3), are attributed to each partner in direct
18 proportion to his share of the profits. 11 C.F.R. § 110.1(e).

19 According to LifeCare's counsel, LMS elects to be treated as a corporation for tax
20 purposes. Because LMS is an LLC in Louisiana, where the LLC has been recognized as a

⁵ An LLC is a hybrid form of business organization that combines characteristics of a corporation and a partnership. In most states, LLC's can elect to be treated as either a corporation or a partnership for tax purposes.

1 distinct form of business organization since 1992, all of LMS's contributions made prior to the
2 promulgation of the regulations governing contributions by LLCs would be treated as if they
3 were made by a partnership. *See* A.O. 1995-11, A.O. 1998-11. However, because LMS has
4 elected to be taxed as a corporation, all of the contributions that occurred after the promulgation
5 of the regulations governing contributions by LLCs would be treated as corporate contributions.
6 *See* 11 C.F.R. § 110.1(g). Although the characterization of the contributions varies over time, all
7 of the contributions resulted in prohibited corporate contributions.

8 In the case of the LMS contributions characterized as corporate contributions, the explicit
9 prohibition of 2 U.S.C. 441b(a) applies. In the case of the contributions that are treated as
10 partnership contributions, they are attributed not just to the LMS partnership itself, but also to its
11 members, in direct proportion to each member's profit share. A.O. 2001-07; *see* 11 C.F.R. §
12 110.1(e). Because the only member of LMS is LifeCare, which is a corporation, a contribution
13 by LMS to any political committee is attributed between LMS (as the partnership) and LifeCare
14 (as the sole member of the partnership). *Id.* As a result, the part attributed to the corporate
15 member constitutes a prohibited corporate contribution. *See* 2 U.S.C. § 441b(a). For the
16 foregoing reasons, this Office recommends that the Commission find reason to believe that LMS
17 and LifeCare each violated 2 U.S.C. § 441b(a) by making prohibited corporate contributions to
18 various political committees.

19 For the same reasons stated above with regard to LMS's and LifeCare's alleged violations
20 pursuant to 2 U.S.C. § 441f, *see* discussion *supra* pages 5-6, at this time this Office does not
21 recommend that the Commission find that these alleged violations were knowing and willful.
22 Accordingly, it would be appropriate for the Commission to defer any decision about whether

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1 LMS and LifeCare acted knowingly and willfully with regard to the 2 U.S.C. § 441b(a)
2 violations.

3 **A. David LeBlanc and Donald Boucher**

4 The Act provides that officers or directors of any corporation are prohibited from
5 consenting to any contribution or expenditure by the corporation. 2 U.S.C. § 441b(a). The Act's
6 corresponding regulations also prohibit persons from knowingly permitting his or her name to be
7 used to effect that contribution or assisting in making contributions in the name of another. *See*
8 11 C.F.R. § 110.4(b)(1)(ii)—(iii). As discussed above, the evidence presented in the *sua sponte*
9 submission indicates that there is significant correlation between expense payments, bonuses, and
10 salary adjustments authorized and received by Mr. LeBlanc and Mr. Boucher from 1997 through
11 2002, and political contributions made by each. *See* Sept. 12, 2003 Submission at 10-14. The
12 total amounts of contributions potentially reimbursed to Mr. LeBlanc and Mr. Boucher were
13 \$25,500 and \$65,900, respectively.⁶ *Id.* at 5.

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18 In fact, on at

19 least one occasion, Mr. Thompson made such a contribution and was reimbursed by a personal

⁶ The total amount for Mr. Boucher includes \$7,750 in contributions made in his wife's name, which were potentially reimbursed to Ms. Boucher through payments to Mr. Boucher from LifeCare.

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1 check from Mr. Boucher, who received the money from LMS by including that amount on one of
2 his own expense reports. *Id.* at 16. Based on the foregoing, this Office recommends that the
3 Commission internally generate Mr. LeBlanc and Mr. Boucher as respondents in this matter, and
4 find reason to believe that each violated 2 U.S.C. §§ 441b(a) and 441f.

5 This Office further recommends that the Commission find reason to believe that Mr.
6 LeBlanc and Mr. Boucher acted knowingly and willfully. The Act addresses violations of law
7 that are knowing and willful. *See* 2 U.S.C. §§ 437g(a)(5)(B) and 437g(d). The knowing and
8 willful standard requires knowledge that one is violating the law. *FEC v. John A. Dramesi for*
9 *Congress Comm.*, 640 F. Supp. 985, 987 (D. N.J. 1986). A knowing and willful violation may
10 be established “by proof that the defendant acted deliberately and with knowledge that the
11 representation was false.” *US v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). An inference of a
12 knowing and willful act may be drawn “from the defendant’s elaborate scheme for disguising”
13 his or her actions. *Id.* at 214-15.

14 In addition to the e-mail discussed above, which describes a deliberate scheme for the
15 reimbursement of contributions, the descriptions given on expense reports and bonus requests
16 submitted by Mr. LeBlanc and Mr. Boucher, which were allegedly used to reimburse LMS
17 employees for political contributions, include the following: “bonus for job well done,” “bonus
18 pay,” “retro pay increase,” “expense advance,” and “expenses,” among others. Since these
19 descriptions indicate attempts to disguise the reimbursement of the political contributions, they
20 may have been deliberately deceptive and can be used to infer knowing and willful behavior by
21 Mr. LeBlanc and Mr. Boucher. *See Hopkins*, 916 F.2d. at 214-15. Accordingly, this Office

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1 recommends that the Commission find reason to believe that Mr. LeBlanc and Mr. Boucher
2 knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f.

3 **B. Hedy LeBlanc, John George, Ann George, Leroy Thompson**

4 Each of these individuals is a current or former employee of LMS and each made political
5 contributions which closely correlated in time and amount with bonus payments, salary
6 adjustments, or expense payments from LMS. *See* Sept. 12, 2003 Submission at 15-17. The
7 amounts of each individual's potentially reimbursed contributions are as follows: Hedy LeBlanc
8 (\$12,500); John George (\$11,350); Ann George (\$3,500); Leroy Thompson (\$3,000). *See id.* at
9 5. Because of the close correlation in time and amount between these contributions and certain
10 payments to these individuals by LMS, it is likely that each of these individuals was reimbursed
11 for one or more political contributions. As for Mr. Thompson, as previously discussed, he
12 admitted that he was reimbursed for three separate political contributions. *Id.* at 16.

13 Therefore, this Office also recommends that the Commission internally generate Hedy
14 LeBlanc, John George, Ann George, and Leroy Thompson as respondents in this matter and find
15 reason to believe that each violated 2 U.S.C. §§ 441a(b) and 441f. However, there is no evidence
16 available to suggest that any of these individuals knew that such activity was impermissible
17 under the Act; therefore this Office does not recommend that the Commission find that violations
18 by these individuals were knowing and willful.

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18 **IV. RECOMMENDATIONS**

- 19 1. Open a MUR;
- 20 2. Find reason to believe that LifeCare Holdings, Inc. violated 2 U.S.C. §§ 441b(a) and 441f
- 21
- 22
- 23 3. Find reason to believe LifeCare Management Services, LLC, violated 2 U.S.C. §§
- 24 441b(a) and 441f

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4. Find reason to believe that David LeBlanc knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f
5. Find reason to believe that Donald Boucher knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f
6. Find reason to believe that Hedy LeBlanc, John George, Ann George, and Leroy Thompson, violated 2 U.S.C. § 441f
7. Approve the appropriate Factual and Legal Analyses;
- 8.
9. Approve the appropriate letters.


12/16/03
Date

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